

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 97-0607
Sales and Use Tax
For The Tax Periods: 1994, 1995, 1996**

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ISSUES

I. **Sales/Use Tax – Sales to the Government**

Authority: 45 IAC 2.2-5-24, 45 IAC 2.2-5-25, IC 6-8.1-5-1.

The Taxpayer protests the Department's assessment of sales/use tax on instructional material they provide with their pool operating courses and seminars to employees of government entities.

STATEMENT OF FACTS

The Taxpayer is a retailer of swimming pool supplies and also holds instructional classes and seminars for customers to become certified pool operators. The Taxpayer offers these courses mainly to schools, parks and non-profit organizations. As part of the course, the Taxpayer provides the customers with instructional material for the course. The Taxpayer purchases the instructional material exempt from sales/use tax. There is no breakdown on the invoices of the costs of books and the cost for the training.

I. **Sales/Use Tax: Sales to the Government**

DISCUSSION

Pursuant to 45 IAC 2.2-5-24:

(b) The state gross retail tax shall not apply to sales to the state of Indiana, its agencies and instrumentalities, all counties, townships, and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions of tangible personal property and public utility services and commodities predominantly for use in the performance of governmental functions.

However, 45 IAC 2.2-5-24 (e) states: “Purchases must be invoiced directly to the governmental entity and paid out of governmental funds.” The Taxpayer argues that their invoices are a direct billing and are paid out of governmental funds. The Taxpayer provided several invoices and check stubs from different government entities to verify this. Yet, the invoices only show the total cost of the service and do not break down the cost of the instructional material. Therefore, they are considered part of the service provided by the Taxpayer and are not directly invoiced to the government entity.

Pursuant to 45 IAC 2.2-5-25 (a): “There is not a blanket exemption from the sales tax for purchases by governmental agencies and units. It provides that only the purchase of tangible personal property used by the governmental agency in connection with a governmental function may be purchased exempt from sales tax.” Since the instructional material is not shown on the invoices, the Taxpayer has not overcome the burden of proof to support her contention that the government purchased the instructional material from the Taxpayer.

FINDING

The Taxpayer’s protest is respectfully denied.